

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1134 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

STATE OF GUJARAT

Versus

ARVINDBHAI K VASAVA

Appearance:

MR MA BUKHARI , APP, for the appellant.
MR BHARAT A.SURTI for Respondents.

CORAM : MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

Date of decision: 16/01/99

ORAL JUDGEMENT

The State of Gujarat, being aggrieved by the judgment and order in Criminal Appeal No.29/98 passed by the learned Additional Sessions Judge, Bharuch, acquitting the respondents of the offences punishable under Sections 326 and 324 of the Indian Penal Code, has filed the present appeal.

It may be stated that the accused alongwith one Khuman Karsan were tried in Sessions Case No.29/88 by the learned 2nd Extra Assistant Sessions Judge, Bharuch for the offences punishable under Sections 307, 324, 504 read with section 114 of the Indian Penal Code .At the end of the trial accused No.1 Arvind Karsan was convicted for offence punishable under section 326 IPC and was sentenced to suffer R.I. for three yeas and to pay a fine of Rs.500/- indefault to undergo further R.I. for six months and accused No.2 Kanchan Lavghan was convicted for offence punishable under section 324 IPC and was sentenced to suffer R.I. for six months and to pay a fine of Rs.100, indefault to undergo further R.I. for one month. However, accused No.3 Khuman Karasan was acquitted for the punishable under section 323 IPC.

The prosecution case in nutshell is that the complainant Dilaverbhai Bajibhai Garasiya and his elder brother Fatehsinh are residing opposit each other at village Bhalod with their family . On 19-12-1985 at about 8.00 p.m. Fatehsinh had gone for calling labourers for plucking cotton . At about 9.00 p.m. one Dalsukh Bhailal Vasava approached the complainant and informed him that Fetehsinh was beaten with Dharia by accused No.1 and that Fatehsinh is lying on the street. On being asked to elaborate the incident, the complainant was informed by said Dalsukh that when the dog of accued No.1 attacked Fatehsinh, Fatehsinh gave a kick to it and also scolded accused No.1. According to Dalsukh, because of this there was exchange of words and the quarrel took place. Thereafter accused No.1 had given Dharia blow on the head of Fetehsinh. At that time accused No.2 and one Khuman Karsan also came running and they also started inflicting blows on the person of Fetehsinh. According to Dalsukh, accused No.2 inflicted blow with Dharia on the left hand. Dalsukh also informed him that he and one Chandu Jivan had tried to save injured Fatehsinh.

On being informed, the complainant and other persons went to the place where Fatehsinh was lying and thereafter took the injured to Dr.Chaudhari (Ex.13) ,Medical Officer, Rajpardi. The complainant thereafter

lodged complaint before Umalla Police Station, and after investigation, the chargesheet was filed against the accused before the learned JMFC, Jhagadia, who later on committed the accused to the Couse of Sessions at Bharuch.

Mr.M.A.Bukhari, learned Additional Public Prosecutor, has taken us through the evidence of the material prosecution witnesses . After having taken us through the evidence , he submitted that the learned Additional Sessions Judge has committed an error in acquitting the accused. In the submission of Mr. Bukhari, there is no reason to disbelieve the evidence of injured Fatehsinh Bajibhai (Ex.37) who has been supported by the eye witnesses Chandubhai Jivanbhai (Ex. 30) and Bai Hariben Hiriyabhai (Ex.38) and also the medical evidence of Dr.Chaudhari (Ex.13), Dr. Kamlesh Rathod (Ex.19) and Dr. Kamlesh Solanki (Ex.46). Having gone through the evidence of the aforesaid witnesses, it is clear that there were injuries on the person of Fatehsinh but there was no fracture caused as a result of the said injuries. Both the doctors of Civil Hospital, Bharuch as well as SSG Hospital, Vadodara have remained consistent when they deposed. They have not noticed any fracture on the person of injured Fatehsinh. Therefore, the question that arises is as to how far the accused were responsible for causing injuries on the person of Fatehsinh. As far as complainant Dilaver Bajibhai (Ex.26) is concerned, admittedly he was not an eye witness and he filed the complaint, Ex.27, as per the story narrated by one Dalsukh Vasava who, being an eye witness and ,therefore, a material witness, for the reasons best known to the prosecution, has not been examined as a prosecution witness. No explanation is forthcoming from the prosecution for omitting such a vital witness and, therefore, the evidence of the complainant Dilaver Bajibhai has remained uncorroborated.

Apart from this, even though there is Police Outpost at Bhalod where the incident had taken place, the complainant did not lodge the complaint at Bhalod Outpost but had chosen to file the complaint with Umalla Police Station which is at a far distance of about 50 klms from Bhalod. Dr.Chaudhari in his evidence has clearly stated that he had informed Umalla Police Station about the incident. However he is not corrborated about the same by PSI Subhash Dattatray Jakhare (Ex.41) of Umalla Police Station. Even we find number of informities in the evidence of injured Fatehsinh inasmuch as he has not remained consistent with his police version with regard to the injuries sustained by him; treatment given by

Dr.Chaudhari etc. Even though Fatehsinh has referred to the presence of Chandu Jivan (Ex.30), the evidence of Chandu Jivan also does not inspire any confidence. The so-called presence of Chandu Jivan is not supported by eye witness Bai Hariben (Ex.38). In fact, injured Fatehsinh does not say anything about the presence of Bai Hariben when the incident in question had taken place. Dalsukh Vasava who was the eye witness and had in fact informed the complainant about the incident has not been examined by the prosecution and, on the contrary, he has been examined by the defence at Ex.54. He has clearly stated in his evidence that Chandu Jivan was not present when the incident in question had taken place. Similarly, complainant Dilaver in his evidence has also not stated about the presence of Chandu Jivan and Bai Hariben. The learned Additional Sessions Judge has found number of informities in the evidence of Chandu Jivan and Bai Hariben and has rightly not believed their evidence. Suffice it to say that we are in total agreement with the reasoning given by the learned Additional Sessions Judge. On reading the evidence of the aforesaid witnesses of the prosecution, only conclusion that can be arrived is that their evidence is not trustworthy inasmuch as they are not giving the clear picture as to the manner in which the incident had taken place. Since this being an acquittal appeal, it is not suffice to accept the evidence of the prosecution witnesses on their face value. In our opinion, the learned Additional Sessions Judge has given cogent and convincing reasons and has rightly not believed the evidence of the prosecution witnesses. Since we are in total agreement with the same, in view of the judgment of the Supreme court in State of Karnataka vs Hemareddy AIR 1981 SC 1417 , it is not necessary to renarrate and re-appreciate the evidence of the prosecution witnesses.

In the result, the appeal fails and is dismissed.

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